

Appl. No. 10/757,813
Atty. Docket No. 7294C
Amdt. dated Nov. 15, 2005
Reply to Office Action of August 18, 2005
Customer No. 27752

REMARKS

Claim Status

Claims 1-7, 10-12, and 15-17, are pending in the present application. No additional claims fee is believed to be due.

Claim 1 has been amended to correct a transcriptional error. Support for the amendment can be found in the specification, for example, at page 23, lines 20-23. Claims 2 and 10 have been amended to correct a transcriptional error. Support for the amendments can be found in the specification at page 23, lines 9-11.

Claims 3 and 11 have been amended to specifically characterize the present invention. Support for the amendments can be found in the specification, for example, at page 9, lines 21-24. Claims 5 and 15 has been to specifically characterize the present invention. Support for the amendment can be found in claims 5 and 15 as filed, for example.

Claims 8, 9, 13, and 14, have been canceled without prejudice.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Objections to the Drawings

The Office Action has objected to the drawings under 37 CFR § 1.83(a) because they fail to show every feature of the claimed invention. Specifically, the drawings fail to show all of the features of claims 8-9 and 13-14. Applicant has canceled claims 8, 9, 13, and 14.

The Office Action has objected to the drawings because Figure 8 is not consistent with the description thereof on page 4. The Office Action alleges that Figure 8 is a cross section but is not described as such. Applicant respectfully disagrees.

The application states, in regard to Figure 8, "In another embodiment, as shown in Figure 8, the absorbent article of the present invention may be an insert 21 or sanitary napkin which is intended to be applied separately to the wearer or to be placed in the wearer's underwear, an outer cover or the like." (application page 35, lines 26-28). The

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view shown in Figure 8 is not a cross section but is a plan view of the insert 21 or sanitary napkin constructed in accordance with the present invention.

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The Office Action has objected to the abstract of the disclosure because of the use of legal terminology within the abstract. Applicant submits herewith this response an amended abstract.

The Office Action has objected to the incorrect use of trademarks within the specification. Applicant has amended the specification in several locations and added registration symbols where applicable to any trademarks used in those several locations.

Obviousness type Double Patenting Rejection

The Office Action rejected Claims 1-17 under the judicially created doctrine of obviousness-type double patenting over commonly owned patent 6,703,537 issued Roe, et al. Applicant submits together with this reply a terminal disclaimer in compliance with 37 CFR 1.321(c). Accordingly, Applicant requests withdrawal of this rejection.

Rejection Under 35 USC §103(a) Over Thompson, KC, Moore, and Lash

Claims 1-17 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,281,208 issued to Thompson et al., hereafter "Thompson '208", U.S. Patent No. 3,929,135 issued to Thompson, hereafter "Thompson '135", European Patent No. 0215417 issued to Sneyd et al., hereafter "Sneyd", U.S. Patent No. 4,898,642 issued to Moore et al., hereafter "Moore", U.S. Patent No. 4,935,022 issued to Lash et al., hereafter "Lash". Applicant respectfully traverses the rejection by the Office Action.

It is well settled that the "if the facts in a prior legal decision are sufficiently similar to those in an application under examination, the examiner may use the rationale used by the court." MPEP § 2144.04. However, "[i]f the applicant has demonstrated the criticality of a specific limitation, it would not be appropriate to rely solely on case law as the rationale to support an obviousness rejection." *Id.*

The Office Action relies on the rationale of *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955) in its rejection and states that "where the general conditions of a claim are disclosed, it is not inventive to discover the optimum or

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workable ranges by routine experimentation.” (Office Action page 7). However, the application discloses that there is a relationship between resistance to compression and storage capacity. (See specification page 29, lines 8-11). The application further discloses that the storage element should have a compressive resistance of 50%, more preferably 70%, even more preferably 80%, and most preferably 90%. (specification page 29, lines 12-16). So, more storage capacity can be realized by the storage element for higher resistances to compression, e.g. at 80% compressive resistance there is a higher storage capacity than at 50% compressive resistance.

In contrast, Thompson ‘208, makes no mention of compressive resistance values and teaches that capillary channel fibers which are nonlinear have, “for a given number of fibers, a higher loft and increased resilience.” (col. 12, lines 5-7). Additionally, Thompson ‘208 further teaches that the “capillary channel fibers will be chosen such that the pad of fibers... will have a ratio of wet:dry caliper of at least about 80%.” (col. 13, lines 23-26). However, Thompson ‘208 makes no mention of compressive resistance and the relationship between compressive resistance and storage capacity. Also, the rejection of the Office Action does not provide any factual basis on why one skilled in the art would be led to determine a compressive resistance of 70% knowing the wet:dry caliper of an element and that nonlinear capillary channel fibers have increased resilience. Instead the Office Action relies on the rationale used in *In re Aller* to fill this gap.

However, because the Applicant has disclosed the criticality of the element of compressive resistance, the reliance by the Office Action on the rationale of *In re Aller* to make its obviousness rejection is inappropriate. Consequently, Applicant asserts that the Office has failed to establish a *prima facie* case of obviousness against amended claim 1 and amended claim 10, which recite, in part, that a storage element has a compressive resistance of at least about 70%.

Regarding claims 5 and 7, the Office Action states that layer 10 includes nonabsorbent fibers which have a dimension of the nominal size claimed. Thompson ‘208 teaches that suitable capillary channel fibers for use in layer 10 have “a depth-of-walls of about 48 microns and a width-between-walls of about 37 microns.” (col. 10, lines 28-30). A micron can be considered to be equivalent to a micrometer. (See Hawley's Condensed Chemical Dictionary, 14th Edition, copyright 2002 by John Wiley & Sons, Inc.). Thus, Thompson ‘208 teaches that the depth-of-walls is about 0.048 mm

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and the width-between-walls is about 0.037 mm. Consequently, Thompson '208 does not teach that the nonabsorbent fibers are within the claimed range, i.e. 1 mm and 10 mm.

Regarding claims 2 and 10-17, the Office Action asserts that Thompson '208 teaches a topsheet having an open area of 30% to 60%. (Office Action page 8). However, for the reasons stated above, Thompson '208 does not teach or suggest a storage element having a compressive resistance of at least about 70% which is a claim element of amended claim 10. Therefore, Applicant asserts that amended claim 10 is nonobvious over Thompson '208.

For the foregoing reasons, Applicant asserts that the Office Action has failed to establish a *prima facie* case of obviousness against amended claim 1 and amended claim 10. Additionally, Applicant asserts that the Office Action has failed to establish a *prima facie* case of obviousness against claims 2-7, 11, 12, and 15-17, which depend either from amended claim 1 or amended claim 10. Accordingly, Applicant asserts that claims 1-7, 10-12, and 15-17, are in condition for allowance.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-7, 10-12, and 15-17, is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By


Signature

George H. Leal

Typed or Printed Name

Registration No. 56,813

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Date: November 15, 2005

Customer No. 27752

(Amendment-Response to Office Action.doc)

Revised 8/3/2005

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AMENDED ABSTRACT

Please replace the abstract with the following amended abstract.

~~An~~ A disposable absorbent article ~~comprising~~ has a liquid-perVIOUS topsheet, a liquid pervious backsheet joined to at least a portion of the topsheet, an absorbent core disposed between at least a portion of the topsheet and the backsheet, ~~and a waste-management~~ an acceptance element, and a storage element. The acceptance element is disposed adjacent to a bodyside surface of the backsheet. The acceptance element has one or more apertures each having an effective aperture size of between about 0.2 square mm to about 25 square mm. The storage element is disposed between at least a portion of the acceptance element and the backsheet. The storage element has disposed in at least a portion of the crotch region. The waste-management element preferably includes an acceptance element having an effective open area of at least about 30 percent and a storage element having a compressive resistance of at least about 70 percent.